

EXHIBIT A

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MICHAEL L. SMITH
LOUIS W. PAPPAS
SHARI L. ROSENTHAL
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CLIFFORD A. CLANCEY
RINAT B. KLIER-ERLICH
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R. ADAM ELLISON
SCOTT WM. DAVENPORT
JASON J. MOLNAR *
DAVID V. ROTH
KATHLEEN A. HUNT *
STEVEN J. RENICK
JAMES J. PERKINS *
JAMES E. GIBBONS
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MICHAEL A. WEISMANTEL
JANET D. JOHN *
KEVIN H. LOUTH
TRACIE L. CHILDS
SHARON S. JEFFREY
CANDACE E. KALLBERG
DAVID R. REEDER *

TOBY D. BUCHANAN
LADELL H. MUEHLESTEIN
PETER C. CATALANOTTI
SEVAN GOBEL
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JENNIFER SUPMAN
KEITH RICKER †
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STEVEN AMUNDSON*
PAUL HANNA
TONY M. SAIN
MARILYN R. VICTOR*
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January 23, 2017

VIA E-MAIL & U.S. MAIL

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Re: Ferreol CARDENAS, Sr., et al. v. City of Manhattan Beach, et al.
Case No.: 2:15-CV-01469-PJW
MKERT File No.: 03804-046486
Incident Date: 04/10/2014

Dear Counsel:

The purpose of this letter is to confirm the details of our **in-person meet-and-confer** conference of counsel with you on January 23, 2017 on the issue of potential **pre-trial documents and motions in limine**.

MOTIONS IN LIMINE (ANTICIPATED).

Unless the parties can stipulate to certain exclusions of evidence, defendants anticipate bringing the following motions *in limine*.

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1. **[MIL No. 1 – Daubert Motion Excluding Testimony-Opinions of P's Expert Martin Pietruska & Mechanism of Death Opinions From Dr. Augustine, Dr. Lwin, or Any Other Expert Witness]**
 - a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. Opinion Testimony (or Reference Thereto) of Plaintiffs' Expert Pietruszka (forensic pathologist) that: (a) mechanism of Cardenas' death was officer blows/beating; (b) mechanism of Cardenas' death was TASER-related fall to the ground with a head-impact as a result
 - ii. Opinion Testimony (or Reference Thereto) of Non-Retained Experts J.D. Augustine and Cho Lwin (forensic pathologists) that: (a) mechanism of Cardenas' death was TASER-related fall to the ground with a head-impact as a result; or (b) mechanism of Cardenas' death was officer blows/beating
 - iii. Opinion Testimony (or Reference Thereto) by any Expert or Lay Witness Regarding the Mechanism of Death
 1. As opposed to the Cause of Death = blunt force trauma to the head
 - iv. Anything else in the depo Plaintiffs' Expert admits he's not an expert on
 1. *Tactical Note*: be detailed in the motion – i.e., state the scope broadly, but then go to "including but not limited to" and a specific list from his depo
 - b. Basis:
 - i. *Daubert*: Lack of Foundation – Lacking Threshold for Medical Opinion Admissibility
 1. Pietruszka Has Not Stated Mechanism of Death Opinions to a Reasonable Degree of Medical Certainty – and Such Are Thus Not Admissible
 2. Augustine & Lwin Have Both Conceded That They Cannot State Their Mechanism of Death Opinions to a Reasonable Degree of Medical Certainty – and Such Are Thus Not Admissible
 - ii. *Daubert*: Lack of Foundation – Insufficient Factual Support (Speculation)
 1. No Witness Testimony To Any Officer Blows
 2. Augustine Excludes Officer Blows As Cause of Any of Cardenas' Injuries (Exclusion Stated to a Reasonable Degree of Medical Certainty); No Exam by Lwin – exam limited only to Cardenas' brain (no factual basis for blows opinions, if any)
 3. Exam by Investigator Kim = No signs of blows to Cardenas' body
 4. No Witness Testimony to Any Incident Head-Strike – On Ground, Object, or Otherwise (Lynch, Muzatko, 2 Paramedics)
 5. Cardenas Claimed He Hit His Head Inside His Car – pre-TASER (Presgraves)

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6. Cardenas Reported 16 Days of Severe Headaches on 04/22/14 – which means he may have suffered his head injuries back on 04/06/14 (Dr. Chavez depo – Cardenas History)
 - c. OUTCOME OF CONFERENCE OF COUNSEL: The parties conferred in person on this motion at the November 18, 2016 deposition of Dr. Pietruszka. Plaintiffs opposed. The motion is currently pending before the Court, after a hearing on January 23, 2017.
2. **[MIL No. 2 – Fact or Documents Regarding Deft. Lynch’s Election to Forego Answering LASD Investigator Questions About the Incident]**
 - a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. Any facts or documents about Officer Lynch’s refusal to give a statement to LASD (NOTE: Lynch had completed a report and believed the statement-interview would be redundant/unnecessary).
 - b. Basis:
 - i. Legal Relevance & Unfair Prejudice: FRE 401-402, 403; *Graham* – UOF Reasonableness Only Evaluated With Facts Actually Known To Officers At Time; FRE 403 – Confusion of the Issues, etc.
 - c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated they were unlikely to stipulate to such a motion/evidentiary exclusion.
3. **[MIL No. 3 – Post-Incident Events and Information Unknown to Officers Before Incident Use of Force]**
 - a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. The fact that Cardenas was unarmed.
 - b. Basis:
 - i. Legal Relevance & Unfair Prejudice: FRE 401-402; *Graham* – UOF Reasonableness Only Evaluated With Facts Actually Known To Officers At Time; FRE 403 – Confusion of the Issues, etc.
 - c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs had not decided if plaintiffs would stipulate to this motion/evidentiary exclusion.
4. **[MIL No. 4 – Non-Incident Officer Personnel File Information and Records, Including Alleged Non-Incident "Bad" Acts By Officers]**
 - a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. Investigations and related records re Non-Incident uses of force/seizures or other Internal-Affairs type investigations, complaints, or

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- training/discipline involving defendant officers or any MBPD officers (if any) – including but not limited to any/all non-incident acts.
 - ii. Officer Performance Evaluations
 - iii. All specific factual details related to calls involving any of the defendant officers where such calls occurred either before the incident or after the incident *and* did not involve decedent Cardenas
 - iv. All City peace officer and defendant officer personnel file information that is not directly related to the shooting incident (incident date = 04/10/2014).
 - b. Basis:
 - i. Relevance (particularly if *Monell* is dead by MSJ) – FRE 401-402
 - ii. Improper Character Evidence (Bad Acts, etc.) – FRE 404-406
 - iii. Undue Prejudice – confusion of issues, prejudice outweigh probative – FRE 403
 - c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated that they may be willing to stipulate to this motion/evidentiary exclusion. Defendants will prepare the appropriate stipulation upon plaintiffs' confirmation.
5. **[MIL No. 5 – Speculative & Ultimate Issue Opinion from Lay Witnesses]**
- a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. Any and all opinions from lay witnesses (including plaintiffs or experts) that the force used on Cardenas was excessive, unnecessary, unreasonable, unlawful, violative of any constitutional/legal rights, or comparable opinions or commentary by witnesses who are not properly disclosed experts in police practices (example: opinions by decedent's parents that the use of force was excessive or that the officers beat him in the head)
 - ii. Any and all opinions and/or speculation by lay witnesses as to events that occurred outside of their contemporaneous perception (sight/hearing) – including events that the witness admits to not seeing, or statements the witness admits he/she was unable to hear or decipher
 - iii. Any and all opinions and/or speculation by lay witnesses as to what Cardenas meant or intended to do, what Aguilar was thinking or feeling during the incident, and comparable speculative opinion testimony
 - iv. Any and all opinions and/or speculation by lay witnesses as what any officer meant or intended to do, what any officer was thinking or feeling during the incident, and comparable speculative opinion testimony
 - v. Any and all opinions and/or speculation by lay witnesses as what caused Cardenas' fatal head injuries

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- b. Basis:
 - i. Ultimate Issue Opinion: Since the ultimate issue is whether or not the use of force was reasonable-versus-excessive/unreasonable, he may not opine directly on the ultimate issue to be decided by the jury
 - ii. Lack of Personal Knowledge Requirement/Speculation – e.g., FRE 602, 701
 - c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated that they may be willing to stipulate to this motion/evidentiary exclusion. Defendants will prepare the appropriate stipulation upon plaintiffs' confirmation.
6. **[MIL No. 6 – Non-Incident Facts About Defendants and Counsel Including Associated News Accounts]**
- a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. Any and all Non-Incident AZPD police encounters not involving decedent
 - ii. Any and all lawsuits involving the City or defendants not involving decedent
 - iii. Any and all lawsuits, or related litigation procedures, involving defendants' counsel not involving decedent
 - iv. Any alleged tactics or litigation procedures employed by defendants' counsel during this action – including but not limited to all references to conduct of defendants or defendants' counsel outside of the instant litigation or outside of the courtroom in this action
 - v. Clientele or representation of any other clients by defendants' counsel – other than representation of the defendants to this action – including any references to actual, specific, or general clientele or unrelated cases of defense counsel
 - vi. Any and all references to the size, structure, location, or legal expertise of defendants' counsel
 - vii. All news/media accounts of the incident or related to any incident investigation or incident-related litigation
 - b. Basis:
 - i. Relevance – FRE 401-402
 - ii. Undue Consumption of Time/Confusion of Issues – FRE 403 (guilt by association, trial by media, etc.)
 - iii. Improper Character Evidence – FRE 404-406
 - iv. Hearsay – FRE 801 *et seq.*
 - v. Lack of Authentication – FRE 901 *et seq.*, 1001 *et seq.*
 - c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated that they may be willing to stipulate to this motion/evidentiary exclusion. Defendants will prepare the appropriate stipulation upon plaintiffs' confirmation.

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7. **[MIL No. 7 – Undisclosed or Unproduced Witnesses-Evidence]**

- a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. any and all testimony from any and all **undisclosed or untimely disclosed witnesses** – including all witness testimony (lay or expert) where such witnesses were not timely disclosed prior to the applicable Court-set deadline for completion of discovery in this action – including full compliance with Rule 26(a)(1)(A)(i)’s requirement of the disclosure of witness names, addresses, phone numbers, and the anticipated subject matter of such witnesses’ testimony, as well as including all witness testimony (lay or expert) where such witness could not be deposed despite diligent efforts by defendants or defendants’ counsel prior to the applicable Court-set deadline for completion of discovery in this action;
 - ii. any and all **undisclosed/unproduced or untimely disclosed/produced documents, records, recordings, tangible things, or other physical evidence**, where the offering party did not timely disclose such physical evidence or did not timely produce such evidence (where such was requested by the opposing party) prior to the applicable Court-set deadline for completion of discovery in this action.
 - iii. **EXAMPLE**: Testimony by plaintiffs’ undisclosed/unproduced witness that Cardenas told some family member who was a Sheriff’s deputy that he had been struck by blows during the incident.
- b. Basis:
 - i. Violation of Affirmative Disclosure Rule - Fed. R. Civ. P. 26(a), 37(c);
 - ii. Undue Prejudice, Unfair Surprise - Fed. R. Evid. 403;
 - iii. Hearsay - Fed. R. Evid. 801 et seq.;
 - iv. Lack of Authentication - Fed. R. Evid. 1001 et seq.
- c. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated that they may be willing to stipulate to this motion/evidentiary exclusion. Defendants will prepare the appropriate stipulation upon plaintiffs’ confirmation.

8. **[MIL No. 8 – Bifurcation of Punitive Damages Calculation & Exclusion of Officer Financial Information]**

- a. Scope: An Order to exclude from trial any and all evidence, documents, records, recordings, testimony, statements, opinions, argument, and/or reference before the jury, and from admission into evidence, of:
 - i. any and all reference to the involved officers’ wealth and/or personal finances/income
 - ii. bifurcation of trial as to any calculation or award of punitive damages – the predicate for punitive damages (if any) would be tried in the liability phase

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Basis:

- iii. Relevance - Fed. R. Evid. 401-402
- iv. Undue Prejudice, Undue Consumption of Time, and Confusion of the Issues - Fed. R. Evid. 403
- v. Improper Character Evidence - Fed. R. Evid. 404-406
- vi. Hearsay - Fed. R. Evid. 801 *et seq.*
- vii. Lack of Authentication - Fed. R. Evid. 1001 *et seq.*
- b. OUTCOME OF CONFERENCE OF COUNSEL: Plaintiffs indicated that they may be willing to stipulate to this motion/evidentiary exclusion. Defendants will prepare the appropriate stipulation upon plaintiffs' confirmation.

Plaintiffs' Motions *In Limine*:

1. To Exclude Character Evidence re Decedent Prior Arrests/Convictions, History of Drug Abuse – OUTCOME OF CONFERENCE OF COUNSEL: Defendants will oppose this motion/evidentiary exclusion on grounds that it is admissible as *Boyd* suspect intent evidence.
2. To Exclude Evidence Found In Decedent's Car After the Use of Force – OUTCOME OF CONFERENCE OF COUNSEL: Defendants may stipulate to this motion/evidentiary exclusion, particularly if plaintiffs stipulate to Defendants' comparable exclusion; but Defendants would need additional detail to make a final decision.
3. To Exclude Testimony Referring to Decedent as a "Suspect" – OUTCOME OF CONFERENCE OF COUNSEL: Defendants will oppose this motion/evidentiary exclusion.
4. To Exclude Undisclosed Expert Testimony – OUTCOME OF CONFERENCE OF COUNSEL: The parties agree in principle on this motion/evidentiary exclusion, which seems to duplicate (though more narrow in scope) Defendants MIL no. 7.

PRE-TRIAL DOCUMENTS AND LOCAL RULE 16-2 CONFERENCE ISSUES.

Defendants propose a further L.R. 16-2 conference, by telephone, on a mutually-agreeable date to be determined the week of January 30, 2017. At the initial L.R. 16-2 conference on January 23, 2017, Defendants advised that Defendants would be willing to take the laboring oar of preparing joint pre-trial documents in this case.

Except where otherwise indicated, the following issues were not discussed at the January 23, 2017 meeting, but are issues that the parties are required to confer about.

Subject Matter Jurisdiction. We do not anticipate there being any issues regarding the district court's federal question subject matter jurisdiction, particularly as plaintiff still maintains a 42 U.S.C. § 1983 claim against defendants. However, if plaintiff views this as an issue, please let us know at the conference of counsel.

Stipulation to Facts and Contentions of Law and Fact/PTCO. To facilitate effective trial presentation, as well as preparation of the Court-Ordered proposed pre-trial conference order

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("PTCO") and associated contentions of law and fact, defendant proposes that the parties confer extensively in an attempt to determine which incident facts may be determined by stipulation of the parties, and which are still in dispute and remain to be decided by the jury. Defendant intends to submit by the deadlines stated at the end of this letter a draft PTCO for plaintiffs' consideration *if* the case is not resolved by summary judgment. Defendants also propose that plaintiff stipulate to facts consistent with a draft joint statement of the case to be submitted to plaintiff with other draft pre-trial documents.

Exhibit Disclosures and Joint Exhibit List/Exhibit Binders. Defendants anticipate that all items listed on defendants' Rule 26 disclosures and produced to plaintiff might be exhibits at trial: however, defendants intend to offer only incident records and related foundational records as exhibits at trial. Defendants propose that defendants prepare a joint exhibit list and joint exhibit binders containing joint exhibits, plaintiffs' exhibits, and defendants' exhibits therein, as well as the associated pretrial exhibit stipulation (pursuant to the Court's Order), *if* the case is not resolved by summary judgment. (Defendants believe that plaintiff has identified trial exhibits for plaintiff already, and defendant is amenable to including such on the exhibit list, along with any objections that may be appropriate, if any.) Defendants contend that certain witnesses could be eliminated from the witness list by the Local Rule required stipulation re exhibit authenticity.

Once a proposed joint exhibit list is circulated by defendants, plaintiff would insert plaintiff's proposed objections (if any) to avoid auto-admission of joint exhibits. Defendants proposed that the parties use the same bates numbers used in discovery/disclosures on the trial exhibit list to allow for easy identification of documents, rather than to rely solely on narrative document descriptions that might otherwise result in confusion.

Witness Disclosures/Witness List. Defendants propose that only witnesses that the parties actually intend to call to testify at trial be listed; and that potential (but unlikely or unserved) witnesses be listed only as "conditional witnesses" as per Local Rule 16-5. Defendants will prepare a proposed list for plaintiff's revision that conforms to the Local Rules and the specific Order of this Court.

Evidentiary Matters and Experts. *See* Motions in Limine section, *infra*. Defendants are willing to discuss potential stipulations for the exclusion of evidence to avoid the need for some motions *in limine*.

Presentation of Testimony by Deposition. Defendants do not presently anticipate that any defense witnesses' testimony would be presented solely by deposition, but defendants reserve the right to do so should a witness become unavailable for trial. Defendants request that plaintiff identify any testimony to be presented solely by deposition, including specific designations as required by the Local Rules and applicable Orders of the Court.

Disclosure of Graphic and Illustrative Material. The disclosure deadline for such materials is no later than March 10, 2017, pursuant to U.S. Dist. Ct., C.D. Cal. L.R. 16-3.

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Defendants only anticipate using demonstratives that incorporate disclosed exhibits, and PowerPoint type presentations summarizing opening statement and/or closing arguments. Defendants are willing to confer on this issue.

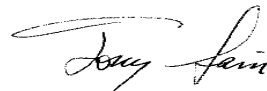
Jury Instructions and Verdict Form. Defendants will be sending to plaintiff proposed joint jury instructions and a verdict form that reflects the state of the claims as it stands after the Court's hearing/ruling on defendants' motion for summary judgment ("MSJ").

Please let us know, *in writing*, **no later than 5:00 p.m. on January 25, 2017**: (a) which dates the week of January 30 that plaintiffs' counsel would be available for the proposed telephonic pre-trial meeting dates; and (b) if plaintiff is amenable to the proposed joint pre-trial document drafting schedule, or advise as to plaintiff's proposed alternative.

Please feel free to contact us if there is anything about this matter that you would like to discuss. Thank you for your attention.

Very truly yours,

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**



Mildred K. O'Linn, Esq.
Tony M. Sain, Esq.

TMS/itc

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